

# **CITY OF DANVILLE**

## **Purchasing Department**

### **STANDARD REQUIREMENTS & INSTRUCTIONS FOR BIDDING**

Applicable to all construction work performed under contract to  
the City  
(supersedes all prior versions)

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## 1.0 STANDARD REQUIREMENTS & INSTRUCTIONS FOR BIDDING

### 1.1 DEFINITIONS

The following terms and expressions used in this document shall be understood as follows:

1.1.1 Wherever the word "City" or "Owner" is used, it shall be understood to mean the City of Danville, Virginia.

1.1.2 Wherever the word "Contractor" is used, it shall be understood to mean the party engaged to perform all work described herein.

1.1.3 Wherever the word "Engineer" is used, it shall be understood to mean the City Engineer, or his duly appointed successor, or representative, acting within the scope of the duties entrusted to them and as stated in the contract.

1.1.4 Wherever the word "Subcontractor" is used, it shall be understood to mean persons, firms, or corporations having a direct contact with the Contractor, and including those who furnish materials worked to a special design in accordance with the plans and specifications, but not including those who merely furnish materials not so worked.

1.1.5 Wherever the word "Addenda" is used, it shall mean written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the bidding documents or the Contract Documents.

1.1.6 Wherever the word "Agreement" is used, it shall mean the written agreement between the City and Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

1.1.7 Wherever the word "Bid" is used, it shall mean the offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

1.1.8 Wherever the word "Shop Drawings" is used, it shall be understood to mean all drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or for Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a supplier and submitted by Contractor to illustrate material or equipment for some portion of the Work.

1.1.9 Wherever the word "Specifications" is used, it shall be understood to mean those portions of the Contract Documents consisting of written technical descriptions of material, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

1.1.10 Wherever the word "Supplier" is used, it shall be understood to mean a manufacturer, fabricator, supplier, distributor, materialman, or vendor.

1.1.11 Wherever the word "Work" is used, it shall be understood to mean the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

1.1.12 Wherever the word "Plans" or "Drawings" is used, it shall be understood to mean the Contract Plans, accompanying the specifications and such detail and supplementary draw-

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ings as may be furnished from time to time. Plans may be included as part of the specifications. Therefore, the Contractor is directed to familiarize himself with the contents of the complete contract documents.

1.1.13 Wherever in the specifications or upon the drawings the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood that the direction, requirement, or permission of the Contractor is intended and similarly the words "approved", "satisfactory", or words of like import, shall mean approved or acceptable or satisfactory to the Contractor.

1.1.14 Whenever the word "Contract" or "Contract Documents" is used, it shall mean and include Invitation for Bids, Bid Proposal, Agreement between City and Contractor, General Conditions, Payment Bond, Performance Bond, Notice of Award, Notice To Proceed, Addenda, Change Orders, Technical Specifications, with all amendments, modifications, and supplements issued on or after the Effective date of the Agreement.

1.1.15 The term "Standard Specification" shall mean Road and Bridge Specifications, Virginia Department of Transportation, current edition, with all amendments.

## 1.2 BIDDER ELIGIBILITY

1.2.1 Bidders are required to submit evidence that they have practical knowledge of the particular work bid upon and that they have the financial resources to complete the proposed work. Failure on the part of any Bidder to carry out previous contracts satisfactorily, or lack of experience or equipment necessary for the satisfactory and timely completion of this Project, may be deemed sufficient cause for disqualification of said Bidder.

1.2.2 The Bidder must readily and independently document that the Bidder possesses the experience, equipment and financial resources necessary for a timely and professional completion of this project.

1.2.3 The object of any Request For Qualifications is to make it possible for the City to have exact information on the financial ability, equipment owned, and experience of the Bidder in order to reduce the hazards involved in awarding contracts to parties apparently not qualified to perform them, and to select those Bidders qualified to properly complete the Work.

1.2.4 Bids will only be accepted from manufacturers, authorized distributors, dealers, or contractors who are actively engaged in the sale, manufacture, or type of construction of the item(s) called for in the bid. No proposal will be accepted from or contract awarded to any person, firm, or corporation that is in arrears or is in default to the City upon any debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to said City or had failed to perform faithfully any previous contract with the City. Where an installation or assembly is to be performed by a subcontractor, the bidder must name the subcontractor, and the City reserves the right to determine whether the named subcontractor is fit and capable to perform the required work. If City, after due investigation, has reasonable objection to any proposed Subcontractor, other person, or organization, it may before giving the Notice of Award request the apparent low Bidder to submit an acceptable substitute without an increase in his Bid price. Any Subcontractor, other person, or organization so listed and to whom the City does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to the City. This does not remove responsibilities for said Subcontractors, suppliers, etc., to comply with the Contract Specifications. The Contractor shall not be required to employ a Subcontractor, other person, or organization against whom he has reasonable objection. The City reserves the right to reject any proposal where an investigation of the available evidence or information does not satisfy the City that the Bidder is qualified to carry out properly the terms of the Contract. The City's decision as to qualifications of the Bidder shall be final.

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1.2.5 Under § 54.1-1100 to 54.1-1117 of the Code of the Commonwealth of Virginia, the Contractor shall possess a Class "A" Contractor's license on bids exceeding seventy thousand dollars (\$70,000.) and Class "B" registration on bids exceeding one thousand five hundred dollars (\$1,500.). For further information, contact the Board for Contractors, Virginia Department of Professional and Occupational Regulation (804-367-8500).

### 1.3 BID SUBMITTAL

#### 1.3.1 EXAMINATION OF SITE AND PROJECT INFORMATION

a. Bidders shall investigate and inspect the sites of the Work contemplated before preparing their Proposals in order to acquaint themselves as to the actual nature, character, conditions, quality requirements of the Work, subsurface conditions, and accuracy of estimated quantities.

b. All information given on the drawings or in the contract documents relating to existing subsurface and surface conditions and other structures is from the best sources at present available to the City. All such information is furnished only for the information and convenience of the Bidders.

c. It is agreed and understood that the City does not warrant or guarantee that the existing conditions or other structures encountered during the construction will be the same as those indicated on the drawings or in Contract Documents. The Bidder must be satisfied regarding the character, quantities and conditions of the various materials and the work to be done.

d. It is further agreed and understood that the Bidder will not use any of the information made available or obtained in any examination in any manner as a basis or ground of claim or demand of any nature against the City or Engineer arising from or by reason of any variance which may exist between the information offered and the actual conditions, materials, or structures encountered during the Work, except as may otherwise be provided for in the Contract Documents.

#### 1.3.2 BID PREPARATION

a. Bid proposals must be written in ink or typewritten and shall be submitted on the forms issued. Unsigned bids will not be accepted. No bid may be considered if received after the time shown on page one of the bid invitation. Contractors are expected to examine all instructions, specifications of the bid invitation, drawings, sites, installations, etc. Failure to do so will be at the Contractor's risk. Erasures or other changes must be initialed by the person signing the bid.

b. Envelopes containing bids must be sealed and marked in the lower left hand corner with the invitation number, project title, and submitted to the office indicated on page number one (1) of the bid invitation.

#### 1.3.3 INTERPRETATION

a. If any person contemplating the submission of a bid is in doubt as to the true meaning of any part of the Invitation For Bid or other documents, he should submit a written request for an interpretation thereof to the Director of Purchasing or the Engineer. An interpretation of the bid invitation document will be made only by written addendum issued to each potential bidder. The City will not be responsible for explanations or interpretations of bid invitation documents except as issued in accordance herewith.

b. All notices, requests, instructions, approvals, and proposals, must be in writing.

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c. If during performance of the project, the Contractor finds a conflict, error, or discrepancy in the Contract Documents, he shall so report to the Engineer in writing at once before proceeding and shall obtain a written interpretation or clarification from the Engineer.

d. In resolving such conflicts, errors, and discrepancies, the documents shall be given precedence in the following order: Agreement, Modifications, Addenda, Supplementary Conditions, Instruction to Bidders, Standard Requirements & Instructions for Bidding, Proposal and Specifications/Drawings. Figure dimensions on drawings shall govern over scale dimensions and detailed drawing shall govern over general drawings.

#### 1.3.4 IRREGULAR BID PROPOSALS

Bid proposals shall be considered irregular for the following reasons:

a. If the bid is on a form other than that furnished by the City, if the City's form is altered, or if any part of the proposal form is detached.

b. If there are unauthorized additions, conditional or alternate pay items, or irregularities of any kind, which make the proposal incomplete, indefinite, or otherwise ambiguous.

c. If the bid does not contain a unit or lump sum price for each pay item listed in the proposal.

d. If the bid contains unit or lump sum prices that are obviously unbalanced.

e. If the bid is not accompanied by the proposal guaranty specified by the City.

#### 1.3.5 WITHDRAWAL OF BID DUE TO ERROR

a. A bidder for a City construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration, if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith and the mistake was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn.

b. The bidder shall give notice in writing of his claim of the right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure.

#### 1.3.6 DISQUALIFICATION OF BIDDER

A bidder shall be considered disqualified for any of the following reasons:

a. Submitting more than one proposal from the same partnership, firm, or corporation under the same or different name.

b. Evidence of collusion among bidders. Bidders participating in such collusion shall be disqualified as bidders for any future work of the City until any such participating bidder has been reinstated by the City as a qualified bidder.

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c. If the bidder is considered to be in "default" for any reason specified in §1.2 "Bidder Eligibility" and § 1.3 "Bid Submittal."

#### 1.4 AWARD CRITERIA

1.4.1 Unless otherwise specified all formal bids submitted shall be binding for sixty (60) calendar days following bid opening date.

1.4.2 The award will be made to the lowest responsible and responsive bidder whose proposal conforming to the invitation will be most advantageous to the City, price and other factors considered such as completion time, fiscal stability of the bidder, prior experience in the type of work called-for in the Invitation, management resources, owned, service, resale value, etc.

1.4.3 The City reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

1.4.4 After notice from the City, the successful bidder has ten (10) days to enter into a contract or forfeit as liquidated damages the security deposit. By executing the contract, the Contractor certifies that he has reviewed the Contract Documents and the project area and accepts the conditions of each (See Appendix A, Sample Contract).

#### 1.4.5 NEGOTIATION

In the event the bid from the lowest responsible bidder exceeds available funds, the City may negotiate with the apparent low bidder to obtain a contract price within available funds. The procedures for such negotiations shall be as follows:

a. City, Engineer, and apparent low bidder together will review the project and attempt to find mutually agreeable proposed changes that will effectively reduce the cost of the project.

b. Apparent low bidder will present reasonably documented and substantiated proposed deductions in project cost for each potential project change, which will allow City to evaluate each proposed deduction.

c. The parties will attempt to negotiate and sign a reasonable contract for the entire project, the price of which does not exceed available funds.

#### 1.5 GUARANTY

1.5.1 The Contractor shall guarantee that all the materials used and all the work done under the contract shall fully comply with the requirements of the plans and specifications and the instructions of the City.

1.5.2 Any defects in the completed work or failure of the construction to fully perform or endure the service for which it is intended, which in the opinion of the City are caused by or due to the use of materials, skill, or workmanship not in compliance with the said plans, specifications, and instructions, that may appear in the work within a period of twelve (12) months after acceptance by the City shall be regarded as prima facie and conclusive evidence that the Contractor has failed to comply with the said specifications, plans, and instructions. The Contractor in this event, shall at his own expense, at such time and in such manner as the Engineer may direct, repair or take up and reconstruct any such defective work, in full compliance with the original specifications, plans, and instructions.

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The repairs required to be made by the Contractor shall extend only to making good any inherent defects which become manifested in the materials and workmanship under ordinary conditions, and shall not be held to cover any breakage or damage caused by improper use or by accident from circumstances over which the Contractor has no control.

1.5.3 All direct, indirect and consequential costs of the City in exercising such rights and remedies will be charged against the Contractor and will be deducted from any monies due the Contractor.

1.5.4 The Contractor shall not be allowed an extension of the contract time because of any delay in performance of the work attributable to the exercise by the City of the City's rights and remedies hereunder.

## 1.6 COVERED WORK

1.6.1 If any Work is covered contrary to the written directive of the Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense. If required by the Engineer, the Contractor shall correct all defective work, whether or not fabricated, installed, or completed, or, if the work has been rejected by Engineer, remove it from the site and replace it with non-defective work. The Contractor shall bear all direct, indirect and consequential costs of such correction or removal, including but not limited to fees and charges of engineers, architects, attorneys, and other professionals. Upon failure of the Contractor to correct the deficiency within a reasonable time, the City may, after seven (7) days written notice to the Contractor, correct and remedy any such deficiency and deduct the costs from any monies due the Contractor.

1.6.2 If the Engineer considers it necessary or advisable that covered work be inspected or tested by others, the Contractor, shall uncover, that portion of the work in question, furnishing all necessary labor, material, and equipment. If it is found that such work is defective, the Contractor shall bear all direct, indirect, and consequential costs of such uncovering, exposure, observation, inspection and testing, and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, Contractors, attorneys, and other professionals), and the City shall be entitled to an appropriate decrease in the contract price. If, however, such work is not found to be defective, the Contractor shall be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction.

## 1.7 BONDS, INSURANCE, ETC.

### 1.7.1 BONDS

a. Each bidder shall enclose in his bid package, a bid bond issued by a surety licensed to do business in Virginia in the amount of five percent (5%) of his bid total. A bank certified check will be accepted in lieu of the bid bond.

b. The successful Contractor shall be required to provide performance and labor & materialman's bonds in the amount of one hundred percent (100%) of the contract price.

### 1.7.2 INDEMNIFICATION

a. The Contractor shall indemnify the City, its agents, officers, and employees against any damages to property or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend and indemnify the City, its agents, officers, and employees from any claims, demands, suits, actions, or proceedings of any kind, including workers' compensation claims, of or by anyone, in any way resulting from or arising out to



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the operations in connection with the work described in the contract, including operations of subcontractors and acts or omissions of employees or agents of Contractor or Contractor's subcontractors. Contractor shall procure and maintain, at Contractor's own costs and expense, any additional kinds and amounts of insurance that, in Contractor's own judgment, may be necessary for Contractor's proper protection in the prosecution of the work.

b. The Contractor shall, at his own expense, appear, defend, and pay all charge of attorneys and other expenses arising there from or incurred in connection therewith, and, if any judgment shall be rendered against the City, and/or its officers, agents, and employees, in any such action, the Contractor shall, at his own expense, satisfy and discharge the same. The Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep, and save harmless and defend the City, its agents, officers, and employees as herein provided.

c. The Contractor shall assume all risks and responsibilities for casualties of every description in connection with the work, except that he shall not be held liable or responsible for delays or damage to the work caused by acts of God, acts of Public Enemy, acts of Government, quarantine restrictions, general strikes through the trade, or by freight embargoes not caused or participated in by the Contractor. The Contractor shall have charge and control of the entire work until completion and acceptance of the same by the City.

d. The Contractor shall alone be liable and responsible for, and shall pay, any and all loss or damage sustained by any person or party either during the performance or subsequent to the completion of the work under this agreement, by reason of injuries to persons and damage to property, building, and adjacent work, that may occur either during the performance of the work covered by this contract or that may be sustained as a result of or in consequence thereof, irrespective of whether or not such injury or damage be due to negligence or the inherent nature of the work.

e. The Contractor shall bear all losses resulting from the amount or character of the work being different, or because the nature of the premises on which the work is done is different from what was expected or on account of the weather, or similar causes.

f. The Contractor, however, will not be obligated to indemnify the City, its officers, agents, or employees against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting solely from the negligence of the City or its officers, agents, and employees.

### 1.7.3 INSURANCE

The Contractor shall not commence work under any contract until he has obtained all the insurance required hereunder and such insurance has been approved by the City; nor shall the Contractor allow any Subcontractor to commence work on his subcontract until all similar insurance has been so obtained and approved. Approval of the insurance by the City shall not relieve or decrease the liability of the Contractor hereunder.

a. Worker's Compensation including Occupational Disease and Employer's Liability Insurance: The Contractor shall take out and maintain during the life of the Contract, Workers' Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this Contract in an amount no less than the minimum allowed by the State Corporation Commission, and in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Workers' Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work.

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b. Comprehensive General Liability Insurance: The Contractor shall maintain during the life of the Contract comprehensive general liability insurance as shall protect him and the City of Danville and its officers, agents, and employees from claims for damages for personal injury, including death, as well as from claims for property damage, which may arise from operations under the Contract, whether such operations be by himself or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The amount of such insurance shall be not less than a combined single limit of \$1,000,000.00 per occurrence on bodily injury and property damage and \$1,000,000.00 aggregate on completed operations. The comprehensive general liability insurance shall provide the following coverage:

Comprehensive  
Premises--Operation  
Products/Completed Operations Hazard  
Contractual Insurance  
Underground Hazard  
Explosion & Collapse Hazard  
Independent Contractor and Subcontractor  
Broad Form Property Damage  
Personal Injury

c. Automobile liability insurance with minimum combined single limits of \$1,000,000.00 per occurrence. This insurance shall include bodily injury and property damage for the following vehicles:

Owned Vehicles  
Non-owned Vehicles  
Hired Vehicles

d. Umbrella Policy: At the option of the Contractor, primary limits may be less than required, with an umbrella policy providing the additional limits needed. This form of insurance will be acceptable provided that the primary and umbrella policies both provide the insurance coverage's herein required. However, any such umbrella policy must have minimum coverage limits of \$3,000,000.00.

e. The Contractor, at his cost, shall effect and maintain in the names of the City, the Engineer and the Contractor, fire, vandalism and extended coverage insurance (or all-risk, builder's risk insurance if approved by the City), upon the entire structure or structures on which the work of this Contract is to be done and upon all material in or adjacent thereto and intended for use thereon to one hundred percent (100%) of the Contract amount. Such insurance may include a deductible provision if the City consents to such provision; however, the Contractor in such case will be liable for paying to the City the amount of such deduction whenever a claim arises. The loss, if any, is to be made adjustable with and payable to the City as Trustee for whom it may concern. Written evidence of the insurance required herein shall be filed with the City not later than thirty (30) days following the date of the award of the Contract. A copy of the evidence of insurance shall be filed with the Director of Purchasing.

f. All policies shall name the City of Danville, its officers, agents, and employees as additional insured. This coverage shall be reflected on the Certificates of Insurance (including any endorsements or riders thereto) which will be provided to the City. Each Certificate of Insurance shall require that notice be given thirty (30) days prior to cancellation or material change in the policies to the Director of Purchasing.

g. The insurance required by this Article shall include contractual liability insurance applicable to the Contractor's obligations under §1.5.

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h. The Contractor shall either (1) require each of his subcontractors to procure and to maintain during the life of his contract "Subcontractor's Insurance" of the type and in the same amounts as specified in the preceding schedule or (2) insure the activities of his subcontractors in his own policy.

## 1.8 MATTERS OF LAW

### 1.8.1 AUTHORITY

a. The Director of Purchasing as the designee of the City Manager has the sole responsibility and authority for negotiating, placing, and when necessary modifying each and every invitation to bid, purchase order, or other award issued by the City of Danville. In the discharge of these responsibilities, the Director of Purchasing may be assisted by assigned buyers. No other City officer or employee is authorized to order supplies or services, enter into purchase negotiation, or in any way obligate the government of the City of Danville for an indebtedness. Any purchases contrary to these provisions and authorities shall be void and the City shall not be bound thereby.

b. This procurement process, including withdrawal of bids and appeals or protests, is governed by the "Procurement Code of the City of Danville, Virginia". Copies of the Procurement Code may be obtained by writing the City of Danville Purchasing Department, PO Box 3300, Danville, Virginia 24543.

### 1.8.2 ENFORCEMENT

This Agreement and the performance thereof shall be governed by and enforced under the laws of the Commonwealth of Virginia, and if legal action by either party is necessary for or with respect to the enforcement of any or all of the terms and conditions hereof, then exclusive venue therefore shall lie in the City of Danville, Virginia.

### 1.8.3 EQUAL EMPLOYMENT

During the performance of the contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions for this nondiscrimination clause.

b. The Contractor also shall not discriminate against any handicapped person in violation of any state or federal law or regulation and shall also post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this additional nondiscrimination clause.

c. The Contractor, in solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such contractor is an equal opportunity employer.

d. Notices, advertisements, and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

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f. The Contractor will otherwise comply with all other applicable provisions of local, State, and Federal law.

#### 1.8.4 NON-APPROPRIATION

In the event that sufficient funds are not appropriated by the Council of the City of Danville, Virginia; or, if appropriated, are not allocated or available; or, in the event the amounts due hereunder are to be paid with funds given to the City by another private or government entity, and such funds are not sufficient for continuation of this agreement during any fiscal year after the City's first fiscal year; the City may, without breach, upon prior written notice to Contractor, terminate the contract in whole or in part.

#### 1.8.5 NOVATION

The Contractor shall not assign or transfer, whether by Assignment or Novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under the Agreement without the written consent of the City; provided, however, that assignments to banks, trust companies or other financial institutions for the purpose of securing a bond may be made without the consent of the City. Assignment or Novation of the Agreement shall not be valid unless the Assignment or Novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Agreement is subject to a prior lien for labor performed, services rendered and materials, tools, and equipment supplied for the performance of the work under the Agreement in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools, and equipment.

#### 1.8.6 OBSERVANCE OF LAWS

The Contractor at all times shall observe and comply with all Federal, State, and City laws, bylaws, ordinances and regulations in any manner affecting the conduct of the work or applying to employees on the project, as well as all orders or decrees which have been promulgated or enacted, by any legal bodies or tribunals having authority or jurisdiction over the work, materials, employees or contract.

#### 1.8.7 PATENTS

The Contractor agrees to indemnify and save harmless the City, and all personnel from all suits and actions of every nature and description brought against them, for or on account of the use of patented appliances, products, or processes, and he shall pay all royalties and charges which are legal and equitable. Evidence of such payment or satisfaction shall be submitted upon request of the City as a necessary requirement in connection with the final execution of any contract in which such patented appliances, products, or processes are used.

#### 1.8.8 PERMITS

The Contractor shall, at his own expense, secure any business or professional licenses, permits or pay any fees required by the City of Danville or Commonwealth of Virginia to include securing a City of Danville business license. For further information, contact Commissioner of Revenue's office at (434) 799-5145.

### 1.9 SPECIFICATIONS AND PRODUCT DESCRIPTION

1.9.1 When brand names, model numbers, trade names, catalog numbers, or cuts are listed, they are, unless otherwise specified, included for the purpose of furnishing bidders with information concerning the style, type, or kind of article desired and a bidder may offer an article

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which he certifies to be equal in quality, performance and other essential characteristics. Any available printed material or literature which describes the product being offered for sale shall be included with the bid. The City shall be the sole judge of suitability of substitutes offered. When a formal numbered specification is referred to in this invitation, no deviation will be permitted and the bidder will be required to furnish articles in conformity with that specification.

1.9.2 After the execution of the Contract, substitution of equipment other than those named in the Contract will be considered for one reason only:

That the equipment or material proposed for substitution is equal or superior in construction, efficiency, durability or maintenance to that named in the contract.

1.9.3 To receive consideration, the Contractor's request for substitution must be accompanied by documentary proof of the actual difference in the equipment or material in the form of certified copies of specifications and statement of actual cost difference. Product samples or location of representative installation may be required for submission to receive approval. The City shall receive the full benefit of the saving in cost involved in any substitution.

1.9.4 In all cases, the burden of proof that the equipment or material offered for substitution is equal or superior to that named in the Contract shall rest on the Contractor, and unless the proof is satisfactory to the City, the substitution will not be approved.

1.9.5 It will be considered that the Contractor, in his Proposal, has contacted manufacturers giving a delivery time which will permit completion of the Project within the specified Contract Time.

1.9.6 The Engineer will issue in writing any approved substitutions. In the event the Contractor obtains the Engineer's approval on equipment or materials other than that specified, the Contractor shall, at his own expense, make any changes in the assemblies, structures, or substrates or whatever is necessary to accommodate the substituted equipment or material.

1.9.7 In the event that the Engineer is required to provide additional engineering services as a result of substitution of materials or equipment which are not "or equal" by the Contractor, or changes by the contractor in dimension, weight, power requirements, etc., of the equipment and accessories furnished, or if the Engineer is required to examine and evaluate any changes proposed by the Contractor for the convenience of the Contractor, then the Engineer's charges in connection with such additional services shall be charged to the Contractor by the City.

1.9.8 Structural design shown on the Contract Drawings is based upon typical weights for major items of equipment as indicated on the contract Drawings and specified. If the equipment furnished exceeds the weights of said equipment, the Contractor shall assume the responsibility for all costs of redesign and for any construction changes required to accommodate the equipment furnished, including the Engineer's expenses in connection herewith.

1.9.9 In the event that the Engineer is required to provide additional engineering services as a result of Contractor's errors, omissions, or failure to conform to the requirements of the Contract Documents, or if the Engineer is required to examine and evaluate any changes proposed by the Contractor solely for the convenience of the Contractor, then the Engineer's charges in connection with such additional services shall be charged to the Contractor by the City.

## 1.10 JOBSITE SAFETY MEASURES

1.10.1 Construction site safety is the responsibility of the Contractor.

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1.10.2 The Contractor shall comply with all local, state and federal laws and the Occupational Safety and Health Act in protecting the public, the worksite, and adjacent property from damage. The Contractor shall provide all sheeting, shoring, barricades, warning lights, signs, and fences required for this protection.

1.10.3 The Contractor shall provide ample sanitary facilities and drinking water for the workers in accordance with State and City health regulations.

#### 1.10.4 EXCAVATION

a. No more than two hundred (200) feet of ditch may be opened at any one time without prior approval from the Engineer or his representative.

b. Unless otherwise permitted by the Engineer, all ditches shall be backfilled at the end of each work day with the exception of the pipe laying area.

c. Ditches left open overnight shall be kept to a minimum, however, any ditches left shall be properly flared or barricaded.

d. All ditches shall be backfilled and protected for each weekend unless prior approval for leaving a ditch open is obtained from the Engineer or his representative.

#### 1.10.5 SHORING

All trenches and other excavations shall be supported to provide safe working conditions. The US Department of Labor Occupational Safety and Health Administration (OSHA) requires that all excavations over five feet deep be sloped, shored, sheeted, braced, or otherwise supported. When soil conditions are unstable, excavations shallower than five (5) feet also must be sloped, supported, or shored. The type and method to be used may vary on each different project and that which will provide the safest working conditions will be utilized.

#### 1.10.6 LIMITATIONS OF WORK AREA

a. The Contractor shall be limited to a specific area for storage of equipment, supplies, and building materials. This area shall be designated by the City and established during the Pre-construction conference.

b. Parking area for employees of the Contractor shall be designated in the vicinity of the project, and it shall be the responsibility of the Contractor to require his personnel to park in this designated area and not in any area which may interfere with the normal operations in and around the construction area or with access and use of the facility by the City.

### 1.11 COMPLETION SCHEDULE

#### 1.11.1 TIME OF COMPLETION

a. The time of completion for this project shall be (to be specified in the Bid Invitation) consecutive calendar days after the issuance of the "Notice to Proceed" by the Engineer.

b. The City reserves the right to suspend work in the case of inclement weather.

c. If the work is delayed by an act, default, or negligence on the part of the City or by approved nonperformance on the part of the Contractor, an equivalent extension of time for completion may be granted by the City when so requested by the Contractor.

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### 1.11.2 LIQUIDATED DAMAGES

a. The City is authorized to deduct and retain out of any monies that may be due or become due to the Contractor under this agreement, the sum of (to be specified in the Bid Invitation) dollars per day, not as a penalty but as liquidated damages for each and every day that the work is not completed beyond the time stipulated in specifications; provided that due account shall be taken of any authorized adjustment of the completion schedule.

b. Should the Contractor fail to substantially complete the Work on or before the date stipulated for Substantial Completion (or such later date as may result from extension of time granted by the City), the Contractor shall pay the City, as liquidated damages, the sum of (to be specified in the Bid Invitation) for each consecutive day that terms of the Contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which the City will sustain by failure of the Contractor to substantially complete the Work within the time as stipulated. Contractor acknowledges that actual damage to City for late completion would be difficult to estimate accurately and that the liquidated damages specified herein represent a reasonable good faith approximation of the City's anticipated damages. In no way shall costs for liquidated damages be construed as a penalty on the Contractor.

c. The City shall retain from final payment (or any remaining retained percentage otherwise to be paid the Contractor) amounts necessary to compensate the City for liquidated damages for which the Contractor is liable. If the final payment and remaining retained percentage are not sufficient to cover the liquidated damages, the Contractor shall pay the City the damages remaining.

### 1.12 TRAFFIC CONTROL

1.12.1 The method of controlling the traffic passing through a work zone and all traffic control and street closed signs and barricades shall be in accordance with the State and Federal Manual on *Uniform Traffic Control Devices* and the *Virginia Work Area Protection Manual*. The Contractor shall not close or excavate within the right-of-way of a street or alley without obtaining the approval of and any required permits from the City.

1.12.2 The Contractor shall provide and maintain, at his expense, all signs, cones, stands and flagmen required to control and protect traffic passing through a work zone (note: traffic control may or may not be a separate pay item).

1.12.3 When practical, the Contractor shall keep all street intersections open to traffic. When work is perpendicular to the street, the Contractor shall work in no more than one-half (1/2) of the street width, at one time. The first half of work must be completed and the street passable prior to working in the second half.

1.12.4 The Contractor shall provide the necessary diversion ditches, dikes or temporary culverts required to prevent mud and debris from being washed onto the streets or property. The Contractor's vehicles shall be kept reasonably clean to prevent mud from being deposited on streets.

### 1.13 PROPERTY MAINTENANCE AND COORDINATION

1.13.1 The Contractor shall notify property owner(s) forty-eight (48) hours prior to working within easements located upon private property in order to coordinate a means of ingress and egress to the work area and determine a storage area for materials.

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1.13.2 The Contractor shall maintain a safe and passable pedestrian and vehicular entrance to all private or public property. The Contractor shall notify the property owner(s) twelve (12) hours in advance of the blocking of an entrance. The entrance shall not be blocked for more than twelve (12) hours at any time, without approval of the Engineer. Sidewalks shall remain clear and open at all times during the work, unless approved otherwise by the property owner or City.

1.13.3 Existing lawn, trees, shrubs, fences, utilities, culverts, walls, walks, drive-ways, poles, signs, right-of-way monuments, mailboxes and the like shall be protected from damage during the work under this contract. Any damage caused to such items shall be repaired or replaced by the Contractor at the Contractor's expense.

1.13.4 Tree and plant roots or branches that may interfere with the work shall be trimmed or cut only with the approval of the property owner. Any trees or plants which are shown to remain and do not interfere with the work but are accidentally damaged by the work shall be repaired or replaced by the Contractor at the Contractor's expense.

#### 1.14 PROGRESS OF WORK

##### 1.14.1 CONFERENCES

Prior to the issuance of a "Notice to Proceed", the Engineer and Contractor, or their duly appointed representatives, shall meet in a pre-construction conference to organize, schedule, and determine responsibilities for the work as it pertains to this project.

##### 1.14.2 PROGRESS CHARTS

a. The Contractor shall within five (5) days or within such time as determined by the Engineer, after date of commencement of work, prepare and submit to the Engineer for approval a practicable schedule showing the order in which the Contractor proposes to carry on the work, the date on which he will start the several salient features (including procurement of materials, plans, and equipment) and the contemplated dates for completing the same.

b. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion at any time. The Contractor shall enter on the chart the actual progress at such intervals as directed by the Engineer, and shall immediately deliver to the Engineer three copies thereof. If the Contractor fails to submit a progress schedule within the time herein prescribed, the Engineer may withhold approval of progress payment estimates until such time as the Contractor submits the required progress schedule.

##### 1.14.3 SCOPE OF WORK

The Contractor shall include in his bid price the placing and furnishing of all materials, labor, tools, equipment, traffic control, and incidentals necessary to complete the work in accordance with the plans and specifications and in accordance with all applicable sections of VDOT's *Road & Bridge Specifications*, current edition.

##### 1.14.4 CONTROL OF WORK

a. The Engineer will not be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.



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b. The Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

c. On all questions relating to quantities, the acceptability of materials and equipment, or work, and the interpretation of the Contract Documents, the decision of the Engineer is final and binding, and shall be precedent to any payment under the contract.

d. All work and material are subject to the inspection and approval of the Engineer. Unless otherwise authorized, work shall be done only in the presence of the Engineer or his authorized representatives. Any work done without proper inspection will be subject to rejection. Inspection of the work shall not relieve the Contractor of the obligation to fulfill all conditions of the contract.

e. The Engineer may require the Contractor to remove from the work any employee that the Engineer may deem incompetent, careless, or insubordinate.

f. Certain items of work may be performed by forces of the City. The Contractor shall cooperate fully in scheduling and coordinating with the Engineer such that no delay will result in the performance of such work. If the Contractor claims that such work delays or causes additional costs, he shall make claims as provided in §1.17 "Work Changes".

g. The City may award, or may have awarded, contracts to others for other work. The Contractor shall cooperate fully with such other Contractors by scheduling his own work with that to be performed under other contracts as may be directed by the City. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other Contractor as scheduled. If the Contractor claims that such work delays or causes additional costs, he shall make claims as provided in §1.17 "Work Changes".

h. Neither the final certificate of payment nor any provision in the contract documents, nor partial or entire occupancy of the premises by the City, shall constitute an acceptance of work not done in accordance with the contract documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting there from, which shall appear within a period of one year from the date of final acceptance of work unless a longer period is specified. The City will give notice of observed defects with reasonable promptness.

#### 1.14.5 RESPONSIBILITIES OF THE CONTRACTOR

a. Any equipment used on this project must be of sufficient design to accomplish every facet of this work and maintained in a satisfactory working condition throughout the time of construction so as not to delay prompt execution of the project.

b. Any vehicle operated by the Contractor on new pavement or existing pavement remaining in service shall be equipped with pneumatic tires. The Contractor shall take necessary precautions to ensure that the new pavement is not damaged. All damaged areas shall be repaired by the Contractor at his cost, in a manner approved by the City.

c. The Contractor shall remove and dispose of all excavated material and shall take necessary precautions to prevent soiling of curbs and adjacent areas. All soiled areas shall be cleaned immediately in a manner approved by the City.

d. The Contractor will be responsible for investigations of subsurface conditions at the project site, and may obtain soil borings at his own expense.

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e. When required by the Engineer, the Contractor shall submit certification that all materials supplied meet the requirements of the specifications.

f. Trees, shrubbery, fences, poles, and all other property shall be protected unless their removal is shown on the drawings or authorized in writing by the Engineer. When it is necessary to cut roots and tree branches, such cutting shall be done under the supervision and direction of the Engineer.

g. The Contractor shall protect any work done from disfigurement by vandals, vehicular traffic, or his own employees. Any damaged work must be repaired, if possible, or removed and replaced as directed by the Engineer. Contractor shall protect fresh laid concrete from rainfall.

#### 1.14.6 CONSTRUCTION ENGINEERING

a. The Engineer will furnish, upon request by the Contractor, centerline and benchmarks necessary for the execution of the work. The Contractor shall carefully preserve and protect all center line benchmarks and shall be responsible for their replacement if damaged or destroyed and for any mistakes that may be caused by their loss or disturbance.

b. The Contractor shall, at his own expense, provide competent engineering survey services and shall provide and maintain accurate, detailed survey work. The Contractor shall be responsible for the coordination of the work and shall give five (5) days notice prior to start of construction and provide a minimum of three (3) days notice in requesting work. After the staking is completed, the Contractor shall be responsible for all restaking due to missing or disturbed stakes.

c. The Contractor shall use care in protecting existing property irons and monuments adjacent to the work areas. If a property iron or monument must be removed to install new facilities, the Contractor shall be responsible for locating the iron or monument in such a manner that it can be accurately replaced by a registered surveyor after the construction of the new facilities is completed. If a property iron or monument is destroyed by the Contractor, it shall be replaced by a registered surveyor at the Contractor's expense.

#### 1.14.7 WORKING HOURS

Work at the job shall only be performed during the hours of 8:00 a.m. to 5:00 p.m. unless otherwise approved by the Engineer.

#### 1.14.8 USE OF EXPLOSIVES

Blasting or other use of explosives shall be done in accordance with Federal, State, or Local laws. A special blasting permit must be obtained from the City of Danville.

#### 1.14.9 SUBCONTRACTS

a. No proposed subcontractor shall be disapproved by the City except for cause.

b. The Contractor shall be as fully responsible to the City for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.

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c. The Contractor shall cause appropriate provision to be inserted in all sub-contracts relative to the work to require compliance by each subcontractor with applicable provisions of the Contract for the improvements embraced in the Contract.

d. Nothing contained in any agreement shall create any contractual relation between any subcontractor and the City.

e. Subcontractors shall maintain the proper Virginia registration in accordance with § 1.2.5 and a valid City of Danville business license if one is required.

## 1.15 REMUNERATION

### 1.15.1 QUANTITIES

The quantities indicated on the proposal are estimates only and the Contractor shall be paid according to unit prices for work actually performed.

### 1.15.2 MEASUREMENT OF QUANTITY

a. All work completed under the Agreement will be measured by the Engineer or his designee in accordance with United States standard measures.

b. The determination of quantities of items required under the terms of the Agreement or as directed by the Engineer will be made by the Engineer based on measurements taken by him or caused to be taken by him.

c. Quantities designated to be paid on the basis of "Plan Quantity" (i.e. quantities shown on the contract drawings) will not be measured for payment, but the quantity paid shall be as stated in the bid document.

### 1.15.3 PAYMENTS TO THE CONTRACTOR

a. Except as hereinafter provided, the City will pay by the end of the month all bills submitted by the tenth day of that month; otherwise, by the end of the following month. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.

b. The City will make payments on estimates approved by the Engineer. The Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each category of the work performed as shown in his proposal for materials stored.

c. At the option of the Engineer, partial payment up to the estimated value, less retainage, may be allowed for any materials and equipment not incorporated in the work, pursuant to the following conditions:

1. Major equipment items stored off site shall be stored in a bonded warehouse and properly maintained during storage.

2. Equipment or materials stored on the site shall be properly stored, protected and maintained by the Contractor.

3. The Contractor shall submit, with his monthly progress payment request, bills or invoices from each material or equipment supplier indicating actual payment.

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4. The Contractor shall submit evidence that he has paid for materials or equipment stored and for which the Engineer has authorized partial payment and previous progress payments, prior to submission of the next monthly payment request.

d. In making payments, five percent (5%) of the estimated amount shall be retained until final completion and acceptance of the contract work. To the extent required by Subsection 11-56.1 of the Code of Virginia, 1950, as amended, the Contractor shall be given the option to use an escrow account procedure for utilization of such retainage funds as described in that Code section.

e. All material and work covered by payments shall thereupon become the sole property of the City, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made, or the restoration of any damaged work, or as waiving the right of the City to require the fulfillment of all the terms of the contract.

f. Upon completion, final inspection and acceptance, the retainage shall be paid to the Contractor.

g. The Contractor, provided all above conditions have been met, has the right to suspend operations after the 30th day following partial billing, if payment has not been received, without forfeiting any of his rights, unless otherwise agreed upon by the City and the Contractor.

#### 1.15.4 CONTRACTOR PAYMENTS TO SUBCONTRACTORS

a. Within seven (7) days after the receipt of amounts paid to the Contractor by the City for work performed by any subcontractor under this agreement, the Contractor shall either:

1. pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or

2. notify the City and subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the contractor of payment from the City for work performed by the subcontractor's payment with the reason for nonpayment.

b. The Contractor shall pay interest to any subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the contractor of payment from the City for work performed by the subcontractor under this agreement, except for amounts withheld as allowed in subsection a (2) above.

c. Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of one percent per month.

d. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

e. The Contractor's obligation to pay and interest charged to a subcontractor pursuant to this section may not be construed to be an obligation of the City. No contract modification may be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

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## 1.16 TERMINATION/STOPPAGES, ETC.

### 1.16.1 POSSESSION PRIOR TO COMPLETION

a. Prior to Substantial Completion of the project, the Engineer may request the Contractor in writing to permit him to use a specified part of the project, which he believes he may use without significant interference with construction of the other parts of the project. If Contractor agrees, he will certify to the City that said part of the project is substantially complete and request the Engineer to issue a certificate of Substantial Completion for that part of the project. Within a reasonable time thereafter, the Engineer shall make an inspection of the part of the Project to determine its status of completion.

b. If the Engineer does not consider that it is substantially complete, the Engineer will notify the Contractor in writing giving his reasons therefore. If Engineer considers that part of the Project is substantially complete, Engineer will execute and deliver a certificate to that effect, fixing the date of Substantial Completion as to that part of the project, attaching thereto a tentative list of items to be completed or corrected before Substantial Completion of the entire project and fixing the responsibility between City and Contractor for maintenance, heat, and utilities as to that part of the project.

c. The City shall have the right to exclude the Contractor from any part of the project, which the Engineer has so certified to be substantially complete, but the City shall allow the Contractor reasonable access to complete items on the tentative list.

### 1.16.2 SUSPENSION OF WORK

The work may be suspended by the Engineer when deemed in the best interest of the City.

### 1.16.3 TERMINATION

a. If the Contractor fails to begin the work under the contract within the time specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to insure the completion of said work within the specified time, or shall perform the work in an unsatisfactory manner, or shall neglect or refuse to remove materials or perform anew such work as shall be rejected as defective or unsuitable, or shall discontinue the prosecution of the work, or if the Contractor shall become insolvent or be declared bankrupt, or shall commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the work in an acceptable manner, the City shall give notice in writing to the Contractor and his surety of such failure, delay, neglect, refusal, or default.

b. If the Contractor, within a period of seven days after such notice, shall not proceed in accordance therewith, then the City Manager shall, have full power and authority to declare the forfeiture of the contract, and to forfeit the rights of the Contractor. The City Manager at his option may call upon the surety to complete the work in accordance with the terms of this contract or may have the City take over the work, including any or all materials and equipment on the ground as may be suitable and acceptable to the City and may complete the work by or on its own employees, or may enter into a new contract for the completion of the work. All costs and charges incurred by the City, together with the cost of completing the work, shall be deducted from any monies due or which may become due on the contract.

## 1.17 WORK CHANGES

1.17.1 The City, without invalidating any construction contract, and without notice to any surety, may order changes in the work within the general scope of the contract consisting of ad-

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ditions, deletions, or other revisions, providing the total amount added or eliminated does not exceed twenty-five percent (25%) of the total contract price, or \$10,000, whichever is greater. All such changes in the work shall be authorized by change order, and shall be executed under the applicable conditions of the contract documents.

1.17.2 The cost or credit to the City resulting from a change in the work shall be determined by unit prices subsequently agreed upon or by mutual acceptance of a lump sum properly itemized, or on the basis of Cost of Work plus a Contractors Fee for overhead and profit as determined below.

1.17.3 The term "Cost of Work" means the sum of costs necessarily incurred and paid by Contractor in the proper performance of the work. Except as otherwise may be agreed to in writing by the City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in § 1.17.4 below.

a. Payroll costs for employees in the direct employ of the Contractor in the performance of work under schedules of job classifications agreed upon by the City and the Contractor. Payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise and payroll taxes. Workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing work after regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by the City.

b. Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and manufacturer's field services required in connection therewith. All trade discounts, rebates, and refunds that are for installed materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they may be obtained. All trade discounts, rebates, and refunds and all returns from the sale of surplus materials and equipment shall accrue to the Contractor.

c. Payments made by the Contractor to Subcontractors for work performed by Subcontractors. All Subcontracts shall be subject to the provisions of the Contract Documents.

d. Supplemental costs including the following:

1. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the work, and cost less market value of such items used but not consumed which remain the property of Contractor.

2. Rentals of all construction equipment and machinery, whether rented from the Contractor or others, shall be negotiated between the Engineer and the Contractor. These rates shall include all fuel, lubricants, insurance, etc. Equipment rental charges shall not exceed the prorated monthly rental rates listed in the current edition of the *Compilation of Rental Rates for Construction Distributors*. Charges per hour shall be determined by dividing the monthly rates by 176. The rental of any such equipment and machinery shall close when the use thereof is no longer necessary for the work.

3. Sales, consumer, use or similar taxes related to the project, and for which Contractor is liable, imposed by Laws and Regulations.

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4. Deposits lost for causes other than negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

1.17.4 The term "Cost of the Work" shall not include any of the following:

a. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships: general managers, engineers, architect, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in Contractor's principal or branch office for general administration of the work and not specifically included in the agreed upon schedule of job classifications referred to in §1.17.3a above all of which are to be considered administrative costs covered by the Contractor's Fee.

b. Expenses of Contractor's principal branch offices other than Contractor's office at the site.

c. Any part of Contractor's capital expenses, including interest on the Contractor's capital employed for the work and charges against the Contractor for delinquent payments.

d. Costs due to the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.

e. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in §1.17.3 "c".

1.17.5 The Contractor's Fee allowed to the Contractor for overhead and profit shall be based on the following:

a. For costs incurred under § 1.17.3a & b, the Contractor's Fee shall be ten percent. Contractor's Fee shall not be applied to payroll taxes, social security contributions or unemployment taxes.

b. For costs incurred under § 1.17.3c, any Contractor's Fee shall be five percent.

c. No fee shall be payable on the basis of costs itemized under §1.17.3d and 1.17.4.

d. The amount of credit to be allowed by the Contract to the City for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in Contractor's Fee by an amount equal to ten percent of the net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in Contractor's Fee shall be computed on the basis of the net change in accordance with this sub-section.

1.17.6 The contract time will be extended in an amount equal to time lost due to delays beyond the control of Contractor if a claim is submitted in writing to the Engineer for consideration with the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. Such delays shall include, but not be limited to, acts of neglect by City or others performing additional work as contemplated and specified elsewhere, or to fires, floods, labor disputes, epidemics,

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abnormal weather conditions or acts of God. No claim for an adjustment in Contract Time will be valid if not submitted in accordance with the requirements of this paragraph.

1.17.7 Should concealed conditions encountered in the performance of the work below the surface of the ground or hidden in existing structures be at variance with the conditions indicated by the contract documents, the contract price may be equitably adjusted by change order upon claim by either party and approval of the other party, made within twenty (20) days after the first observance of the conditions.

1.17.8 The Contractor shall promptly, and before such conditions are disturbed, notify the Engineer in writing of: (a) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (b) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

1.17.9 The Engineer shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of this contract, an equitable adjustment shall be made and the contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required; or unless the Engineer grants a further period of time before the date of final payment under the contract.

#### 1.18 UTILITY MAINTENANCE AND COORDINATION

1.18.1 Before the work is started, the Contractor shall notify all companies, corporations, municipalities and individuals who own utilities on the construction site, in the right of way or immediately adjacent to the construction area of the work to be performed. The Contractor shall arrange to have the various utilities located and to have them removed or relocated as required, or to determine the method of protection acceptable to the respective utility owner, if the method of protection is not specified hereinafter. Any cost incurred with removing or relocating utilities shall be borne by the Contractor unless indicated otherwise.

1.18.2 The location of existing utilities shown on the drawings was taken in part from records and in part from field surveys, and may not represent exact location. The Contractor shall excavate to locate buried utilities far enough in advance of pipeline laying to allow for adjustments in any pipe laying both horizontally and vertically.

1.18.3 The work shall be coordinated and performed in a manner so that all existing fire hydrants, without exception, shall be accessible at any time during the work.

1.18.4 The Contractor shall maintain the existing streams, ditches, drainage structures, culverts and flows at all times during the work. The Contractor shall pay for all personal injury and property damage, which may occur as a result of failing to facilitate drainage.

1.18.5 The Contractor shall ascertain the exact location of each existing utility that may interfere with the work. The Contractor may obtain field utility locations by calling "Miss Utility" (1-800-552-7001) forty-eight (48) hours prior to working in the vicinity of existing utilities. If the utilities fail to locate, a second call shall be made providing an additional three (3) hour notice.

1.18.6 The Contractor shall repair or replace any existing sanitary sewer or storm drain utility damaged or misaligned during or due to the work. All other utilities shall be repaired or replaced by the respective Utility Company(s) at the expense of the Contractor.

1.18.7 The Contractor shall coordinate all work within the vicinity of the existing utilities with the respective Utility Company. The work shall be conducted in a manner to avoid unnec-



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essary service interruption and in accordance with the rules and regulations of the respective Utility Company.

1.18.8 When the work is approaching an existing utility or structure that may be in conflict with, or connected to, the work; the Contractor shall excavate test pits to verify the location or elevation of the existing utility or structure. By taking this precaution the Contractor may adjust the work or have the existing utility relocated as necessary. Failure to take such precautions may result in the Contractor adjusting the work or having the existing utility relocated, at the Contractor's expense.

1.18.9 When the existing utilities cross the trench excavation, they shall be adequately supported and protected from damage due to the work as required, specified or directed. All methods for supporting and maintaining the utilities shall be subject to the approval of the respective Utility Company and the City. Any utilities removed as part of the work, and not indicated to be removed or abandoned, shall be restored using materials and installation equal to the utilities' standards.

1.18.10 The Contractor shall exercise care to insure that the grade and alignment of the existing utility be maintained and that no joints or connections are disturbed. Backfill shall be carefully placed and compacted to prevent the future damage or settlement to the existing utility.

1.18.11 The Contractor shall maintain sewage flow at all times by pumping and/or diversion, or other means acceptable to the Engineer. At no time shall the Contractor allow raw sewage to flow out of the sewerage system to adjacent land or waterways. At no time shall the Contractor cause sewage to surcharge the sewerage system such that sewage backs up into any service connection. In the event such backup occurs, the Contractor shall correct and pay for all damage caused.

1.18.12 No water pipes shall pass through or come in contact with any part of a sewer or storm drain manhole.

## 1.19 ENVIRONMENTAL PROTECTION

1.19.1 Environmental protection considerations for the purpose of any City construction consist of, but are not limited to, the following factors: natural resources including air, water and land; solid waste disposal; noise; control of toxic substances, hazardous materials and radiation; the presence of chemical, physical and biological elements and agents which adversely effect or alter ecological balances; degradation of the aesthetic use of the environment; impact on daily activities such as traffic, and historical, archeological and cultural resources.

1.19.2 The Contractor shall provide and maintain during the life of the contract, the environmental protection as defined herein. His operation shall comply with all Federal, State, and City laws, ordinances and regulations pertaining to the provisions of this and various other sections of this specification shall also be his responsibility.

The Contractor shall not use equipment from which factory installed anti-pollution and noise control devices have been removed or rendered ineffective through lack of proper maintenance.

1.19.3 The Engineer will notify the Contractor in writing of any noncompliance with the aforementioned Federal, State, or City laws or regulations. Such notice, when delivered to the Contractor or his authorized representative at the site of the work, shall be deemed sufficient for the purpose. The Contractor shall, after receipt of such notice, immediately inform the Engineer of proposed corrective action and take such action as may be approved. If the Contractor fails or refuses to comply promptly, the Engineer may issue an order stopping all or part of the work until satisfactory

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corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time or for excess costs or damages by the Contractor.

1.19.4 It is intended that the natural resources within the project boundaries and outside the limits of permanent work performed under this contract be preserved in their existing condition or be restored to an equivalent of the existing condition, as approved by the Engineer, upon completion of the work. The Contractor shall confine his construction activities to areas defined by the work schedule, plans, and specifications.

1.19.5 Except in areas indicated to be cleared, the Contractor shall not remove, cut, deface, injure, or destroy trees, shrubs and vegetation without special permission from the Engineer. No ropes, cables, or guys shall be fastened to or attached to any existing nearby trees for anchorage unless specifically authorized by the Engineer. Where such use is permitted, the Contractor shall be responsible for any damage resulting from such use.

1.19.6 At all times, special measures shall be taken to prevent oil or other hazardous substances from entering the ground, drainage areas and local bodies of water in such quantities as to affect normal use, aesthetics or produce a measurable ecological impact on the area.

1.19.7 Any and all items having apparent historical or archeological interest, which are discovered in the course of construction activities, shall be carefully preserved in place and reported immediately to the Engineer for determination of action to be taken. Work in the immediate area shall be halted and the artifacts or other evidence shall be protected from all damage, including that resulting from the elements, vandalism, and the effects of excavation, demolition, removal and construction operations until such time as qualified officials are able to conduct appropriate investigations. Work in the immediate area shall not proceed until authorization to proceed is obtained from the Engineer. Any such evidence or artifacts found during construction operations or subsequent investigations required by this section shall be delivered into the custody of the City and shall not become the property of the Contractor.

1.19.8 The Contractor shall comply with the *Toxic Substance Control Act*, PL 94-469, (TSCA) which includes, but is not limited to, the regulation of Polychlorinated biphenyl's (PCBs). Since these chemicals are used in some existing insulation, existing fixed and vehicular transformers on some railroads, the Contractor shall assure proper marking, handling, and disposal of any PCBs in accordance with PL 94-469 and the implementing regulations of 40 C.F.R. 761. In order to avoid any inadvertent violation of the law the following rules shall apply:

a. No Polychlorinated biphenyl (PCB) chemical substance, mixture, equipment, container, sealant, coating, or dust control agent will be used a part of the project except as in accordance with all provisions of the *Toxic Substance Control Act* (PL 94-469) as interpreted by the rules and regulations of 40 C.F.R. 761.

1.19.9 Trash shall be picked up and placed in containers, which shall be emptied on a regular schedule. All handling and disposal shall be so conducted as to prevent contamination of the site and other areas and shall not be disposed of in wetlands and shall not be burned. On completion, the area shall be left clean and re-vegetated as described in § 01565. Rubbish and debris shall be transported off the construction site and disposed of by the Contractor in a manner that complies with Federal, State, and City requirements. A permit or license and the location of the disposal area shall be provided prior to transporting any material off the project area. Waste materials shall not be burned within the project area.

1.19.10 Dust shall be kept down at all times including non-working hours, week-ends, and holidays. Soil at the site, haul roads, and other areas disturbed by the Contractor's operations and materials stockpiled for the project shall be sprinkled or treated with dust suppressers or covered as to control dust. No dry power brooming will be permitted. Vacuuming, wet mopping, wet

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sweeping or wet power brooming shall be used instead. Only wet cutting of concrete, concrete and asphalt will be permitted.

1.19.11 The Contractor shall comply with all applicable provisions of the *National Emission Standards for Asbestos* (40 C.F.R. 61 Subpart B).

1.19.12 The Contractor shall inspect all vehicles for dirt prior to their leaving the construction site; dirt, soil, and rubble likely to be dislodged during transit shall be removed from the trucks and other vehicles prior to leaving the site. He shall insure that all equipment transporting material that may become airborne is covered.

## 1.20 EROSION CONTROL

1.20.1 The erosion control system shall protect adjacent properties, shall be in accordance with the *Virginia Erosion and Sediment Control Handbook* and City ordinances, and shall be approved by the Engineer. All erosion control measures shall be placed prior to commencement of grading. All elements of the erosion control system shall be sized and designed in accordance with the criteria specified in the handbook. The numbers in parentheses refer to standard and specification number in the handbook (Virginia).

1.20.2 Temporary measures shall be applied throughout the construction of the project to control erosion and to minimize siltation of adjacent property, streets, drainage ditches, storm drains and waterways. The Contractor, as a minimum, shall employ all erosion control measures indicated on the drawings and specified herein. Disturbed areas that are to be left unfinished for more than 30 days shall be seeded temporarily within seven days of completion of grading operations.

a. Stockpiled material shall be surrounded at the base with a temporary sediment barrier. Slopes of stockpiled material shall not exceed 2 to 1.

b. Vehicles leaving the construction site shall be cleaned to remove mud prior to entrance onto public rights of way.

c. The Contractor shall be responsible for weekly inspection of temporary erosion control system to insure maximum effectiveness of the protective measures. Any damaged areas of the erosion control system shall be immediately repaired.

1.20.3 Minimum required measures (numbers from erosion handbook, 1992 Edition):

- a. Silt fence (3.05)
- b. Storm drain inlet protection (3.07)
- c. Temporary seeding (3.31)
- d. Temporary Construction Entrance (3.02)

1.20.4 In the event the Contractor repeatedly fails to satisfactorily control erosion and siltation, the City reserves the right to employ outside assistance or to use its own forces to provide the erosion control measures indicated and specified. The cost of such work, plus related engineering costs, will be deducted from monies due the Contractor for other work.

## 1.20.5 RIPRAP

a. Materials: Riprap shall be dry riprap, Class II, except where Class III is indicated, as defined in Section 414 of the Virginia Department of Transportation - *Road and Bridge*

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*Specifications* - Latest Edition. The diameter of the largest stone shall not exceed 2.75 feet for Class III Riprap, and 2.25 feet for Class II Riprap.

b. Riprap shall be placed in accordance with Section 414. The riprap shall be placed so that it produces a dense well-graded mass of stone with a minimum of voids. Riprap shall be placed on filter fabric. Filter fabric shall be Trevira 1127, Mirafi 700X, or equal, installed in accordance with the manufacturers instructions. The desired distribution of stones throughout the mass may be obtained by selective loading at the quarry, controlled dumping of successive loads during final placing, or by a combination of these methods. The riprap shall be placed to its full thickness in one operation. The riprap shall not be placed in layers. The riprap shall not be placed by dumping into chutes or similar methods, which are likely to cause segregation of the various stone sizes. Care should be taken not to dislodge the underlying material when placing the stones.

c. The finished slope shall be free of pockets of small stone or clusters of large stones. Hand placing may be necessary to achieve the required grades and a good distribution of stone sizes. Final thickness of the riprap blanket shall be within plus or minus 1/4 of the specified thickness. The thickness shall be 2.75 feet for Class III riprap, and 2.25 feet for Class II riprap.

1.20.6 Where indicated, soil stabilization mat shall be provided in ditches in accordance with the details on the drawings and VDOT EC-3B. The fabric shall conform to VDOT Section 244 and shall be installed in accordance with VDOT Section 606 and the manufacturer's recommendations. The soil stabilization mat shall be Miramat 2400B by Mirafi, or equal, as approved by VDOT, for velocities of 7 to 10 feet per second. The mat shall extend under the riprap at channel ends per manufacturer's recommendations.

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CITY OF DANVILLE

" \_\_\_\_\_ "

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between the City of Danville, Virginia, hereinafter called the City, and \_\_\_\_\_, hereinafter called the Contractor.

WITNESSETH: That the City and the Contractor, for the consideration hereinafter named, agree as follows:

ARTICLE 1. The Contractor agrees to furnish all materials, labor and equipment necessary, and to perform all the work for the project IFB \_\_\_\_\_, " \_\_\_\_\_ " in accordance with terms and provisions of this agreement and all specifications prepared by \_\_\_\_\_, referred to and incorporated herein by reference.

ARTICLE 2. The Contractor agrees that the work under this Agreement will commence not later than ten (10) calendar days after receipt of written Notice to Proceed is given by the City to the Contractor. All work under this contract will be substantially complete on or before \_\_\_\_\_, \_\_\_\_\_ and completed and ready for final payment on or before \_\_\_\_\_, \_\_\_\_\_. Liquidated damages shall be assessed in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) for each calendar day that expires after the time specified for Substantial Completion. Further, Contractor shall pay Owner \_\_\_\_\_ (\$ \_\_\_\_\_) for each calendar day that expires after the time specified for Final Completion

ARTICLE 3. The City agrees to pay Contractor for the performance of the contract the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), subject to additions and deductions as provided in the specifications. Payments on account thereof shall be made not more than thirty (30) days following the approval by City of its representative as follows:

a. Except as hereinafter provided, the City will pay by the end of the month all bills submitted by the tenth day of that month; otherwise by the end of the following month.

b. The City will make payments on estimates approved by the Engineer. The Contractor shall furnish, for approval, a breakdown of the total contract price showing the amount included herein for each category of work performed. This breakdown, modified where directed by the Engineer will be used as a basis for preparing partial estimates and establishing progress payments.

c. All materials and work covered by payments whether incorporated in the Project or not shall become the sole property of the City, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made, or the restoration of any damaged work, or as waiving the right of the City to Require the fulfillment of all the terms of this contract.

d. At the option of the Engineer, partial payment up to the estimated value, less retainage, may be allowed for any materials and equipment not incorporated in the Work, pursuant to the following conditions:

1. Major equipment items stored off site shall be stored in a bonded warehouse and properly maintained during storage.

2. Equipment or materials stored on the site shall be properly stored, protected, and maintained.

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3. For any partial payment the Contractor shall submit, with his monthly progress payment from each material or equipment manufacturer, bills or invoices indicating actual material cost.

4. Contractor shall submit evidence that he has paid for materials or equipment stored and for which the Engineer has authorized partial payment and previous progress payments, prior to submission of the next monthly payment request.

e. Upon completion, final inspection and acceptance, the final payment, including retainage, shall be paid to the Contractor.

f. The Contractor, provided all above conditions have been met, has the right to suspend operations after the 30th day following partial billing, if payment has not been received, without forfeiting any of his rights, unless otherwise agreed upon by the City or its representative and the Contractor.

g. In making payments, there shall be retained five percent (5%) of the estimated amount until final completion and acceptance of the contract work.

ARTICLE 4. During the performance of this Agreement, the Contractor agrees as follows:

a. Within seven (7) days after the receipt of amounts paid to the Contractor by the City for work performed by any subcontractor under this agreement, the Contractor shall either:

1. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or

2. Notify the City and the subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the City for work performed by the subcontractor's payment with the reason for nonpayment.

b. The Contractor shall pay interest to any subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the City for work performed by the subcontractor under this agreement, except for amounts withheld as allowed in subsection a (2) above.

c. Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of one percent per month.

d. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

e. The Contractor's obligation to pay and interest charged to a subcontractor pursuant to this section may not be construed to be an obligation of the City. No contract modification may be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

ARTICLE 5. During the performance of this contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees or applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

c. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

d. The Contractor will otherwise comply with all other applicable provisions of local, state, and Federal law.

ARTICLE 6. The City and the Contractor hereby agree that the Contract specifications, prepared by \_\_\_\_\_ (with the exception of the drawings) are attached hereto, and are incorporated herein and made a part hereof by reference as if fully set forth and include the following:

Contract Drawings  
Performance Bond  
Labor & Material Bond  
Certificate of Insurance  
Invitation for Bid  
Bid Proposal  
General Conditions of the Contract  
Technical Specifications

ARTICLE 7. Notwithstanding any other provision of this contract the total obligation of the City shall not exceed \$\_\_\_\_\_ and no increase shall be made to this amount except by a written amendment executed by officials of the City and Contractor who are authorized by law to execute agreements.

In the event that sufficient funds are not appropriated by the Council of the City of Danville, Virginia; or, if appropriated, are not allocated or available; or, in the event the amounts due hereunder are to be paid with funds given to the City by another private or government entity, and such funds are not sufficient for continuation of this agreement during any fiscal year after the City's first fiscal year; the City may, without breach, upon prior written notice to the Contractor, terminate this Agreement in whole or in part.

ARTICLE 8. It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that if through mistakes and otherwise, any such provision is not inserted in correct form, then this Agreement shall upon application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

ARTICLE 9. This Agreement and the performance hereof shall be governed by and enforced under the laws of the Commonwealth of Virginia, and if legal action by either party is necessary for or with respect to the enforcement of any or all of the terms and conditions hereof, then exclusive venue therefore shall lie in the City of Danville, Virginia.

ARTICLE 10. The City and the Contractor, for themselves, their successors, executors, administrators and assignees hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF, these parties hereto have executed this Agreement on the day and year first above written in two (2) counterparts, each of which is to be deemed to be an original agreement.

CITY OF DANVILLE, VIRGINIA

(SEAL)

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BY: \_\_\_\_\_ ATTEST: \_\_\_\_\_  
Director of Purchasing Deputy City Clerk

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CONTRACTOR

BY: \_\_\_\_\_ ATTEST: \_\_\_\_\_  
President Secretary  
(SEAL)

NOTICE OF AWARD

CITY OF DANVILLE

TO:

PROJECT DESCRIPTION:

The CITY has considered the Bid Proposal submitted by you for the above described WORK in response to its IFB #01/02-\_\_.

You are hereby notified that your BID has been accepted in the amount of  
\$\_\_\_\_\_.

The formal contract will be sent to you shortly; you are requested to execute the Agreement and furnish any required certificates of insurance within ten (10) calendar days from the receipt of the contract.

If you fail to execute said Agreement and to furnish said documents within ten (10) days from the receipt of the contract, said CITY will be entitled to consider all your rights arising out of the CITY'S acceptance of your BID as abandoned. The CITY will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the CITY.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

By: \_\_\_\_\_  
Director of Purchasing

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby  
acknowledged by \_\_\_\_\_

\_\_\_\_\_, this the

\_\_\_\_\_ day of \_\_\_\_\_, 2002.

By: \_\_\_\_\_



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Title: \_\_\_\_\_

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NOTICE TO PROCEED

TO: CONTRACTOR: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

FROM: Purchasing Department

OWNER: City of Danville, VA

PROJECT: \_\_\_\_\_

Contract Amount \$ \_\_\_\_\_

The Contractor agrees that the work under this contract will commence not later than ten (10) calendar days after receipt of written Notice to Proceed is given by City to the Contractor. All work under Phase I of this contract will be substantially complete on or before \_\_\_\_\_, \_\_\_\_ and completed and ready for final payment on or before \_\_\_\_\_, \_\_\_\_.

Liquidated Damages: \_\_\_\_\_ (\$ \_\_\_\_\_) for each calendar day that expires after the time specified for Substantial Completion. Further, Contractor shall pay Owner \_\_\_\_\_ (\$ \_\_\_\_\_) for each calendar day that expires after the time specified for Final finishing point

City of Danville, Virginia

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX B

### CITY OF DANVILLE, VIRGINIA

#### ESCROW AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the City of Danville, Virginia, (City); and \_\_\_\_\_, (Contractor); and Peoples Bank, (Bank), and \_\_\_\_\_, (Surety) provides:

ARTICLE 1. The City and the Contractor have entered into a contract with respect to City of Danville Project IFB # \_\_\_\_\_ " \_\_\_\_\_ " ("the contract"). This Agreement is pursuant to, but in no way amends or modifies, the contract. Payments made hereunder or the release of funds from escrow shall not be deemed approval or acceptance of performance by the Contractor.

ARTICLE 2. In order to assure full and satisfactory performance by the Contractor of its obligations under the contract, the City hereby retains certain amounts otherwise due the Contractor. The Contractor has, with the approval of the City, elected to have these retained amounts held in escrow by the Bank. This agreement sets forth the terms of the escrow. The Bank shall not be deemed a party to, bound by, or required to inquire into the terms of, the contract or any other instrument or agreement between the City and the Contractor.

ARTICLE 3. The City shall from time to time, pursuant to its contract, pay the Bank amounts retained by it under the contract. Except as to amounts actually withdrawn from escrow by the City, the Contractor shall look solely to the Bank for the payment of funds retained under the contract and paid by the City to the Bank.

The risk of loss by diminution of the principal of any funds invested under the terms of this contract shall be solely upon the Contractor.

Funds held by the Bank pursuant to this Escrow Agreement shall not be subject to levy, garnishment, attachment, lien, or other process whatsoever. Contractor agrees not to assign, pledge, discount, sell, or otherwise transfer or dispose of his interest in the escrow account or any part thereof, except to the Surety.

ARTICLE 4. Upon receipt of checks or warrants drawn by the City Treasurer and made payable to it as escrow agent, the Bank shall promptly notify the Contractor, negotiate the same and deposit the proceeds in an interest-bearing savings account.

ARTICLE 5. Upon receipt of a direction signed by the Director of Finance or the Director of Purchasing of the City of Danville, the Bank shall pay the principal of the fund, or any specified amount thereof, to the City of Danville. Such payment shall be made in cash as soon as is practicable after receipt of the direction.

ARTICLE 6. Upon receipt of a direction signed by the Director of Finance or Director of Purchasing of the City of Danville, the Bank shall pay and deliver the principal of the fund, or any specified amount thereof, to the Contractor, in cash and delivery shall be made as soon as is practicable after receipt of the direction.

ARTICLE 7. For its services hereunder, the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrow fund and, if such income is not sufficient to pay the same, by the Contractor.

ARTICLE 8. The net income earned and received upon the principal of the escrowed fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs of administration, such income shall be deemed a part of the principal of the fund.

ARTICLE 9. The Surety undertakes no obligation hereby but joins in this Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor's performance of the contract are not affected hereby.

WITNESS the following signatures, all as of the day and year first above written.

CITY OF DANVILLE, VIRGINIA

By: \_\_\_\_\_  
Director of Purchasing

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CONTRACTOR

By: \_\_\_\_\_  
President

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PEOPLE'S BANK

By: \_\_\_\_\_

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APPENDIX C  
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